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IN THE

Supreme Court of the United States

October Term, 1946.

No. 421

STANDARD OIL COMPANY OF LOUISIANA,
SOUTHERN BOILER AND TANK WORKS,
STANDARD SUPPLY AND HARDWARE COMPANY,
J. F. YAUN, t. d. b. as Yaun Welding, Boiler and Machine Works,
CHARLES CARTER,
PETER JENSEN AND COMPANY, - - - Petitioners,

versus

STEAM STERNWHEEL TOWBOAT "KONGO"
and
RECONSTRUCTION FINANCE CORPORATION, Respondents.

PETITION FOR WRIT OF CERTIORARI

TO THE

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT.

WILLIAM MELLOR,
LOUIS SEELBACH,
Proctors for Standard Oil Co. of La.
GARNER M. PETRIE,
Proctor for Peter Jensen and Co.
LEO J. SANDMANN,
Proctor for the Other Petitioners.

BULLITT & MIDDLETON,
A. M. CURTIS,
BURCH, MINOR & McKAY,
Of Counsel for Standard Oil Co. of La.

WESTERFIELD-BONTE CO., INCORPORATED, LOUISVILLE, KY.

[References, If Required, Under Rules 12, 27 and 38.]

OPINIONS BELOW: U. S. District Court for the Western District of Kentucky (R. 46-60); *The Kongo*, 155 F. (2d) 492 (R. 317-322).

JURISDICTIONAL AUTHORITY: Judicial Code, §240 (a) As amended by Act of February 13, 1925. This was an Admiralty case in a Circuit Court of Appeals, and after judgment by the C. C. A. (6th) (*Id.*)

DATE OF JUDGMENT: District Court, February 28, 1945 (R. 61); C. C. A., May 27, 1946 (R. 316).

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J. F. YAUN, T. D. B AS YAUN WELDING, BOILER AND MACHINE WORKS,
CHARLES CARTER,
PETER JENSEN AND COMPANY, - - - *Petitioners,*

v.

STEAM STERNWHEEL TOWBOAT "KONGO"
AND
RECONSTRUCTION FINANCE CORPORATION, *Respondents.*

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT.

To the Honorable, the Chief Justice, and the Associate Justices of the Supreme Court of the United States:

The petitioners petition for Certiorari to review *The Kongo*, 155 F. 2d 492 [C. C. A. 6th], because, with

reference to the claims of the material-men, it decided an important question of Federal law which has not been, but should be, settled by this Court.

Short Statement of the Matter Involved.

The petitioners are seeking maritime liens against the towboat Kongo to cover the purchase price of necessary supplies and repairs which they furnished her while she was on a voyage up the Mississippi River.

The District Court, who tried the case without a jury, was *correct* in its Finding of Fact (R. 47-56).

The Kongo was owned by Defense Plant Corporation, whose assets now are owned by Reconstruction Finance Corporation, and was under Charter to United States Barge Lines, a private corporation, now bankrupt.

Unknown to any of the furnishers, the Charter Party contained a bare boat provision, whereby the Kongo's master was prohibited from encumbering the Kongo for necessary supplies and repairs.

There was no copy of the Charter Party on board the Kongo.

There was nothing in her papers nor anywhere about her to show a limitation on the apparent authority of the Kongo's master.

The master represented to the furnishers that he did have authority.

The only copies of the Charter Party and the only possible sources of information concerning the limitation on the master's authority were at (*a*) the United

States Barge Lines Office in Louisville, Kentucky and (*b*) just one of the many Defense Plant Corporation offices in Washington, D. C., both many hundreds of miles from the ports of supply.

The Question Presented.

This case arises under the "Maritime Liens" Statutes.*

As by Statute furnishers are entitled to a *presumption* that the master, whether appointed by owner or by *Charterer,* has authority to encumber the vessel for necessary repairs and supplies, the sole question is whether the furnishers "by the exercise of *reasonable* diligence," as required by Statute, could have learned of the Charter limitation on the master's apparent authority.

The answer hinges upon the *extent* of investigation required by "*reasonable* diligence" under the circumstances.

Petitioners contend that, as a matter of law, under the circumstances of this case, no investigation was required beyond the Kongo and her master and, as such investigation did not disclose the limitation, petitioners are entitled to maritime liens against the Kongo. Otherwise the statutory presumption has no meaning at all.

Both the District Court and the C. C. A. gave no weight to the presumption of the master's authority, nor his actual representation of authority, nor the ab-

*46 U. S. C. A., §§971, 972 and 973. See Appendix, p. 6, *infra.*

sence of any papers on the Kongo to the contrary, and held that the furnishers, simply because they knew the Kongo was under Charter, were bound, at their peril, to locate and ascertain the contents of the Charter Party.

Reason Relied On For Allowance of the Writ.

In order that the many firms engaged in the business of furnishing supplies and repairs to vessels may know what they must do to protect themselves and at the same time cause a minimum of delay to vessels on voyage, the question should be settled by this Court.

The case of *U. S.* v. *Carver,* 260 U. S. 482, relied on by the District Court and the C. C. A., involved supplies ordered, not by the master, but by a shore agent who is *not* presumed to have authority. There was no representation of authority made to the furnishers. The furnishers simply made no inquiry at all.

In the *Carver* case the Court stated a sound, but generalized rule as follows, to-wit:

> "They [the statutes] do not allow the material-man to *rest* upon presumptions until he is put upon inquiry, they call upon him to inquire. To ascertain is to find out by investigation. *If* by investigation with *reasonable* diligence the material-man could have found out that the vessel was under Charter, he was chargeable with notice there was a Charter; *if in the same way* he could have found out its terms, he was chargeable with notice of its terms."

But both the District Court and the C. C. A. *misconstrued* the rule.

Although such rule precludes a furnisher from *resting* on a presumption, *i. e.*, accepting the presumption without any inquiry, yet it does not preclude a furnisher from *relying* on a presumption, *i. e.*, accepting the presumption as a circumstance which limits the amount of investigation required by reasonable diligence.

Nor does such rule charge the furnisher, simply because he knows a vessel is under Charter, with the duty of ascertaining, at his peril, the terms of the Charter Party—he must exercise only "*reasonable* diligence."

The opinion of the C. C. A. constitutes a judicial repeal of the statutory presumption of the master's authority and a judicial substitution of investigation "at the furnisher's peril" for investigation with "reasonable diligence."

The Court should determine whether the Statutes mean what they say or whether they mean what the C. C. A. says they mean.

WILLIAM MELLOR,
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Proctors for Standard Oil Co. of La.

GARNER M. PETRIE,
Proctor for Peter Jensen and Co.

LEO J. SANDMANN,
Proctor for the other Petitioners.

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Of Counsel for Standard Oil Co. of La.

August 6, 1946.

APPENDIX.

The "Maritime Liens" statutes, 46 U. S. C. A. §§971, 972 and 973, provide as follows, to-wit:

"**§971. Persons entitled to lien.**

Any person furnishing repairs, supplies, towage, use of dry docks or marine railway, or other necessaries, to any vessel, whether foreign or domestic, upon the order of the owner of such vessel, or of a person authorized by the owner, shall have a maritime lien on the vessel, which may be enforced by suit in rem, and *it shall not be necessary to allege or prove that credit was given to the vessel.*"

"**§972. Persons authorized to procure repairs, supplies and necessaries.**

The following persons shall be *presumed* to have authority from the owner to procure repairs, supplies, towage, use of dry dock or marine railway, and other necessaries for the vessel: The managing owner ship's husband, *master,* or any person to whom the management of the vessel at the port of supply is entrusted. . . ."

"**§973. Notice to person furnishing repairs, supplies and necessaries.**

The officers and agents of a vessel specified in Section 972 of this title shall be taken to include such officers and agents *when appointed by a charterer* . . . but nothing in this chapter shall be construed to confer a lien when the furnisher knew, or by the exercise of *reasonable* diligence could have ascertained, that because of the terms of a charter party, agreement for sale of the vessel, or for any other reason, the person ordering the repairs, supplies, or other necessaries was without authority to bind the vessel therefor."